

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

July 6 2001

ENCORE ORTHOPEDICS, INC.

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U. S. DISTRICT COURT
CLERK'S OFFICE
BY SH DEPUTY

Plaintiff,

V.

Case No. A-01 CA 110-SS

PLUS ORTHOPEDICS USA, INC.

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Defendant.

PLAINTIFF ENCORE ORTHOPEDICS, INC.'S
RULE 26(a) DISCLOSURES

TO THE HONORABLE COURT:

Pursuant to Federal Rule of Civil Procedure 26(a), Plaintiff Encore Orthopedics, Inc. ("Encore") makes the following disclosures:

PERSONS WITH KNOWLEDGE

The names, and to the extent known, the addresses and telephone numbers for each individual likely to have discoverable information relevant to disputed facts alleged in the pleadings, together with an identification of the subjects of the information, is in the schedule attached hereto as Exhibit "A."

DOCUMENTS

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(B), which requires that Encore disclose "a copy of, or a description by category and location of, all documents, data, compilations, and tangible things in the possession, custody, or control" of Encore, Encore states that it is in possession

of the following categories of documents and that said documents are located at Encore's office at 9800 Metric Blvd., Austin, Texas:

- Portions of PLUS' website.
- Section 501(k) notification of intent to market a device named TC-PLUS Solution Knee filed with the FDA.
- Photographs of the TC-PLUS Solution Knee.
- Correspondence between Encore and PLUS.
- May 12, 2000 letter from Nick Cindrich to Robert F. Riedweg, Ph.D. terminating the Distribution Agreements between Encore and PLUS.
- Distribution Agreement between Encore and PLUS.
- October 13, 2000 letter from FDA to Hartmut Loch with PLUS.
- PLUS Foundation Hip System label.
- U. S. Patent No. 5,344,460 and all related documents.

DAMAGES

Encore has not determined the amount of damages it has incurred at this time since the information necessary to make that computation is in the possession and control of Defendant. Once the parties conduct preliminary discovery, Encore will be able to supplement this disclosure.

INSURANCE

Federal Rule of Civil Procedure 26(a)(1)(D) requires that Encore produce "for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of the judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment." Encore is unaware of any

insurance agreement applicable to this case, but will supplement this disclosure should such an agreement become known.

Respectfully submitted,

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
Tel: (512) 236-2381
Fax: (512) 236-2002

By: 
Lawrence A. Waks - SBN 20670700
Matt Dow - SBN 06066500

ATTORNEYS FOR ENCORE ORTHOPEDICS, INC.

CO COUNSEL FOR ENCORE ORTHOPEDICS, INC.

HOHMANN & TAUBE
100 Congress Avenue, Suite 1600
Austin, Texas 78701
Tel: (512) 472-5997
Fax: (512) 472-5248
Eric Taube - SBN 19679350

CERTIFICATE OF SERVICE

This is to certify that on this 6th day of July, 2001, a true and correct copy of this document was served by certified mail, return receipt requested, to the following:

Gary W. Hamilton
Adam Sheehan
AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
1900 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701

Certified Article Number

7106 4575 1294 3751 0933

SENDERS RECORD

Callie A. Bjurstrom
Peter K. Hahn
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
600 W. Broadway, Suite 2600
San Diego, California 92101

Certified Article Number

P 973 538 461

SENDERS RECORD

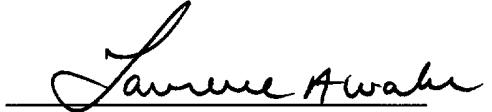

Lawrence A. Waks

EXHIBIT "A"

1. Hartmut Loch
Director of Regulatory Affairs & Business Development
Plus Orthopaedics USA, Inc.
3550 General Atomics Court
Building 15-100
San Diego, California 92121-1122
Tel.: 858-455-2400; Fax: 858-445-2424

(Mr. Loch has knowledge of the February 25, 2000 application and 510K (#K994146) Summary of Safety and Effectiveness, on behalf of PLUS USA, for approval from the U.S. Department of Health and Human Services to market a knee joint prosthesis product under the trade name of TC-PLUS Solution Knee. Prior to Loch's employment with PLUS USA, Loch was the former Chief Executive officer of PLUS USA and was a former consultant to PLUS Endoprothetik AG "PLUS Europe". PLUS USA and PLUS Europe are both wholly-owned subsidiaries of Medica Holding, a Swiss company).

2. Wolfgang Schweizer
President
Plus Orthopaedics, Inc.
6055 Lusk Blvd.
San Diego, California 92121
Tel.: 858-455-2400; Fax: 888-741-4002

(Mr. Schweizer has knowledge of the operations of Plus Orthopaedics, Inc., since incorporation in 1997).

3. Barb Longo
Manager
Plus Orthopaedics, Inc.
6055 Lusk Blvd.
San Diego, California 92121
Tel.: 858-455-2400; Fax: 888-741-4002

(Ms. Longo has knowledge of the operations of Plus Orthopaedics, Inc.).

4. David Lorenzi
Plus Orthopaedics, Inc.
6055 Lusk Blvd.
San Diego, California 92121
Tel.: 858-455-2400; Fax: 888-741-4002

(Mr.Lorenzi has knowledge of the offer made by Plaintiff to Defendant related to the licensing possibilities in this matter).

5. Robert Riedweg
Plus Orthopedics, Inc./Plus Endoprothetik AG
6055 Lusk Blvd.
San Diego, California 92121
Tel.: 858-455-2400; Fax: 888-741-4002

(Mr.Riedweg has knowledge of the offer made by Plaintiff to Defendant related to the licensing possibilities in this matter).

6. Scott McIntyre
Plus Orthopedics USA, Inc.
3550 General Atomics Court
Building 15-100
San Diego, California 92121-1122
Tel.: 858-455-2400; Fax: 858-445-2424

(Mr. McIntyre has knowledge of the corporate details of Plus Orthopedics, Inc., as the corporate agent).

7. David W. Schierf
Buckman Company, Inc.
200 Gregory Lane, Suite C-100
Pleasant Hill, California 94553-3389
Tel.: 925-356-2640; Fax: 925-356-2654

(Mr. Schierf has knowledge of the Summary of Safety and Effectiveness Information—Section 510K (#K994146) filing on October 6, 2000 by Plus Orthopedics of the device known as EPF Plus Cementless Press-Fit Acetabular Cup a/k/a Prosthesis, Hip, Semi-Constrained, Metal/Polymer, Uncemented. Mr. Schierf was the submission correspondent).

8. Celia M. Witten, Ph.D., M.D.
Director Division of General, Restorative and Neurological Devices
Department of Health and Human Services
Food and Drug Administration
9200 Corporate Blvd.
Rockville, Maryland 20850
Tel.: 301-443-1544; Fax: 301-443-1726

(Dr. Witten has knowledge of the Summary of Safety and Effectiveness Information–Section 510K (#K994146) filing on October 6, 2000 by Plus Orthopedics of the device known as EPF Plus Cementless Press-Fit Acetabular Cup a/k/a Prosthesis, Hip, Semi-Constrained, Metal/Polymer, Uncemented. Dr. Witten has reviewed same).

9. Mark N. Milkerson
Division of General Restorative Devices
Department of Health and Human Services
Food and Drug Administration
9200 Corporate Blvd.
Rockville, Maryland 20850
Tel.: 301-443-1544; Fax: 301-443-1726

(Mr. Milkerson has knowledge of the 510K (#K994146) filing on October 6, 2000 by Plus Orthopedics of the device known as EPF Plus Cementless Press-Fit Acetabular Cup a/k/a Prosthesis, Hip, Semi-Constrained, Metal/Polymer, Uncemented. Mr. Milkerson had someone sign-off on his behalf of the 510K device).

10. Harry Zimmerman
Executive Vice President and General Counsel
Encore Orthopedics, Inc. (a wholly owned subsidiary of Encore Medical Corporation)
9800 Metric Blvd.
Austin Texas 78758
Tel.: 512-832-9500; Fax: 512-834-6310

(Mr. Zimmerman has knowledge and/or is familiar with all issues in this law suit including, the U.S. Patent No. 5,344,460, issued on September 6, 1994 a/k/a the '460 patent, as well as, the Distribution Agreement between Plus Endoprothetik AG, a company affiliated with Plus Orthopedics USA, Inc.).

11. Nick Cindrich
Former Chief Executive Officer
Encore Orthopedics, Inc. (a wholly owned subsidiary of Encore Medical Corporation)
9800 Metric Blvd.
Austin Texas 78758
Tel.: 512-832-9500; Fax: 512-834-6310

(Mr. Cindrich has knowledge of the operations of Encore Orthopedics, Inc., as well as, the Distribution Agreement).

12. Gary Garcia
Former Encore Sales Agent
Address unknown

(Mr. Garcia has potential knowledge of the sales of TC-Plus Solution Knees).

13. Rick Kessel
Former Encore Sales Agent
Address unknown

(Mr. Kessel has potential knowledge of the sales of TC-Plus Solution Knees).

14. Lawrence A. Waks, Esq.
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin Texas 78701
Tel.: 512-236-2000; Fax: 512-236-2002

(Mr. Waks has knowledge and/or is familiar with all issues in this law suit. Mr. Waks is counsel for Plaintiff, Encore Orthopedics, Inc., and in addition, will testify as to reasonable and necessary attorney's fees).

15. Matthew J. Dow, Esq.
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin Texas 78701
Tel.: 512-236-2000; Fax: 512-236-2002

(Mr. Dow knowledge and/or is familiar with all issues in this law suit. Mr. Dow is counsel for Plaintiff, Encore Orthopedics, Inc., and in addition, will testify as to reasonable and necessary attorney's fees).

16. Thomas E. Sisson, Esq.
Jackson Walker LLP
112 E. Pecan Street, Suite 2100
San Antonio, Texas 78205
Tel.: 210-978-7700; Fax: 210-978-7790

(Mr. Sisson has knowledge and/or is familiar with all issues in this law suit. Mr. Sisson is counsel for Plaintiff, Encore Orthopedics, Inc., and in addition, will testify as to reasonable and necessary attorney's fees).

17. Stephen R. Fogle, Esq.
Jackson Walker LLP
112 E. Pecan Street, Suite 2100
San Antonio, Texas 78205
Tel.: 210-978-7700; Fax: 210-978-7790

(Mr. Fogle has knowledge and/or is familiar with all issues in this law suit. Mr. Fogle is counsel for Plaintiff, Encore Orthopedics, Inc., and in addition, will testify as to reasonable and necessary attorney's fees).

18. Eric Taube, Esq.
Hohmann & Taube, L.L.P.
100 Congress, Avenue, Suite 1600
Austin, Texas 78701
Tel.: 512-472-5997; Fax: 512-472-5248

(Mr. Taube has knowledge and/or is familiar with all issues in this law suit. Mr. Taube is co-counsel for Plaintiff, Encore Orthopedics, Inc., and in addition, will testify as to reasonable and necessary attorney's fees).

19. Adam D. Sheehan, Esq.
Akin, Gump, Strauss, Hauer & Feld, LLP
1900 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701
Tel.: 512-499-6200; Fax: 512-499-6290

(Mr. Sheehan has knowledge and/or is familiar with all issues in this law suit. Mr. Sheehan is counsel for Defendant, Plus Orthopedics USA, Inc.).

20. Gary W. Hamilton, Esq.
Akin, Gump, Strauss, Hauer & Feld, LLP
1900 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701
Tel.: 512-499-6200; Fax: 512-499-6290

(Mr. Hamilton has knowledge and/or is familiar with all issues in this law suit. Mr. Hamilton is counsel for Defendant, Plus Orthopedics USA, Inc.).

21. Callie A. Bjursrom, Esq.
Luce, Forward, Hamilton & Scripps, LLP
600 W. Broadway, Suite 2600
San Diego, California 92101
Tel.: 619-699-2585; Fax: 619-446-8243

(Ms. Bjursrom has knowledge and/or is familiar with all issues in this law suit. Ms. Bjursrom is co-counsel for Defendant, Plus Orthopedics USA, Inc.).

22. Peter K. Hahn, Esq.
Luce, Forward, Hamilton & Scripps, LLP
600 W. Broadway, Suite 2600
San Diego, California 92101
Tel.: 619-699-2585 (direct); Fax: 619-446-8243

(Mr. Hahn has knowledge and/or is familiar with all issues in this law suit. Mr. Hahn is co-counsel for Defendant, Plus Orthopedics USA, Inc.).

23. Experts, if any.

Plaintiff, ENCORE ORTHOPEDICS, INC. reserves their right to amend this list.